In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-495

JOHN PERCY STIGLETS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted on Count Two of a three-count indictment, which charged him with possession of plates and other items with intent to use them to counterfeit obligations of the United States, in violation of 18 U.S.C. 474 (Pet. App. 11-12). He was acquitted on the two other counts, which charged him

with counterfeiting and possessing 9,422 $20 Federal Reserve notes with intent to defraud, in violation of 18 U.S.C. 471 and 472 (Pet. App. 11-12).[1] The district court sentenced him to six years' imprisonment, subject to the parole eligibility provisions of 18 U.S.C. 4208(a)(2) (Tr. 333-334). The court of appeals affirmed (Pet. App. 11-14).

1. In December 1969, petitioner, the proprietor of a Baton Rouge print shop, discussed with John Sistrunk the possibility of their counterfeiting money. To demonstrate the counterfeiting process to Sistrunk, petitioner made a printing plate from a $20 bank note and printed two or three hundred impressions as samples. However, petitioner decided that this would be too difficult and the two started counterfeiting money orders instead (Tr. 113-117, 215-217).

In June 1970, after petitioner showed Tom Ray some counterfeit $20 bills he had made, they decided to go into the counterfeiting business together (Tr. 61-63). Between then and February 1971 petitioner printed and Ray sold counterfeit $20 and $100 bills with a face value of approximately one million dollars (Tr. 63-72, 245). On February 24, 1971, petitioner was arrested in his shop in the act of printing $20 counterfeit bills; uncut reams containing 9,422 individual bills were in his press and stacked near a paper cutter (Tr. 7-15, 301). The plates and other paraphernalia from which the bills had been made were also on the premises (Tr. 12).

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[1] A codefendant, John Sims, Jr., was acquitted on all counts (Tr. 326). "Tr." refers to the trial transcript, a copy of which is being lodged with the Clerk of this Court.

Testifying on his own behalf, petitioner admitted printing the counterfeit bills (Tr. 245) and, through counsel, admitted every element of each of the charged offenses except that of criminal intent (Tr. 12-15). His defense was that he had engaged in the counterfeiting operation with Ray because he feared for his own and his family's safety; his fear allegedly stemmed from a threat he said he had received from a man to whom Ray had introduced him (Tr. 217-228).[2] Petitioner admitted that in December 1969, six months before the alleged threat and the commencement of his association with Ray, he had engaged in the counterfeiting activities with Sistrunk described above, but said that those acts had been done as a joke (Tr. 215-217).

2. The court instructed the jury that to convict on Count One (the counterfeiting charge) or Count Three (possession of the counterfeit notes) it had to find that petitioner had acted with intent to defraud, but that to convict on Count Two (possession of the plates) it would be sufficient to find that he intended to use the plates to counterfeit obligations of the United States (Tr. 303-305, 316, 322). In addition, in an instruction relating to the charged offenses generally, in which petitioner's theory of defense was presented, the court charged that in order to convict the jury had to find that petitioner's allegedly

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[2] Petitioner testified that Ray had told him that he too was motivated by fear as a result of threats by the same man (Tr. 220-226). Ray denied that he had ever so advised petitioner and said that both he and petitioner had acted voluntarily in everything they did (Tr. 77-78, 103, 107-108).

unlawful acts had been voluntary, that is, not coerced or compelled, and that the jury should acquit if it found that petitioner acted out of fear that death or serious bodily injury would befall him or his family if he refused to engage in counterfeiting (Tr. 308, 315-316). Petitioner did not object to this instruction (Tr. 313-314).

3. Petitioner contends that the court erred in declining to instruct the jury that to convict on Count Two it had to find he had the intent to defraud (Pet. 4-5). But 18 U.S.C. 474 (4th paragraph), the statute on which Count Two is based, does not require proof of intent to defraud.[3] It prohibits possession of a counterfeiting plate with intent to use it to counterfeit an obligation of the United States and the district court so instructed the jury, as the court of appeals pointed out (Pet. App. 12).[4] It is immaterial that 18 U.S.C. 471 and 472, the com-

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[3] 18 U.S.C. 474 (4th paragraph), provides, in relevant part, that:

> Whoever has in his * * * possession any plate * * * or other thing * * * with intent to use such plate * * * or other thing * * * in * * * counterfeiting any such obligation or other security * * * [of the United States] * * * [shall be punished as indicated].

[4] In view of this instruction, petitioner's assertion that the jury was told that mere possession of the plates was a crime regardless of the intent of or reason for the possession (Pet. 7) is incorrect, as the court below observed (Pet. App. 12). Indeed, petitioner himself states in the petition that the trial court required the jury to find, in order to convict on Count Two, that he intended to make counterfeit money (Pet. 5).

panion statutes on which the other counts were based, do require proof of intent to defraud. In phrasing Section 474 as it did, Congress evidently decided that possession of a plate with the likeness of a United States bank note, with intent to use the plate to counterfeit the note, is a serious enough threat to the integrity of the money system to warrant its prohibition without more. Cf. *Baender* v. *Barnett*, 255 U.S. 224, 225.

4. Petitioner also contends that his conviction on Count Two cannot stand because the jury inconsistently acquitted him on the other counts (Pet. 5-7). We assume, *arguendo*, as did the court of appeals (Pet. App. 13), that the jury's verdicts are logically inconsistent. Where, however, a conviction on one count is supported by the evidence and is otherwise valid, the fact that an inconsistent verdict was rendered on another count or counts does not impair the validity of the conviction since each count "is regarded as if it was a separate indictment." *Dunn* v. *United States*, 284 U.S. 390, 393-394; *United States* v. *Fox*, 433 F. 2d 1235, 1238 (C.A. D.C.); *United States* v. *Lloyd*, 425 F. 2d 711, 712-713 (C.A. 5); *United States* v. *Carbone*, 378 F. 2d 420 (C.A. 2), certiorari denied, 389 U.S. 914; cf. *United States* v. *Dotterweich*, 320 U.S. 277, 279. The evidence plainly supports the Count-Two conviction. In any event, the statutes under which petitioner was acquitted involve an element of intent to defraud not necessary to the offense on which the guilty verdict was

returned. Thus, this is not a case in which the jury's verdict must be regarded as internally inconsistent.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1972.

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[5] Petitioner suggests that this was an inappropriate case for the court of appeals to have decided on its summary calendar (*i.e.*, without oral argument), pursuant to its local Rule 18 (cf. *Isbell Enterprises, Inc.* v. *Citizens Casualty Co. of New York*, 431 F. 2d 409 (C.A. 5)), because the alleged error involved the instructions and because counsel, assertedly, could adequately argue its impact only through oral presentation (Pet. 3-5). Consideration of the claimed error, however, required no more than examination of the pertinent pages of the transcript, and the court below acted within its discretion in treating the appeal as it did. Cf. Rule 34(b), Fed. R. App. P.

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